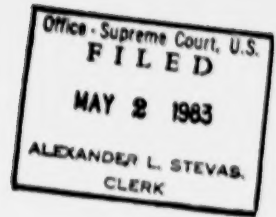


82-1691

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

DENNIS WILLIAMS,

Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI
TO THE ILLINOIS SUPREME COURT

ROBERT W. HALLOCK*
Kirkland & Ellis
200 East Randolph Drive
Suite 6000
Chicago, Illinois 60601
Attorney for Respondent

SYDNEY BOSWORTH MCDOLE
HELEN E. WITT
Kirkland & Ellis
200 East Randolph Drive
Suite 6000
Chicago, Illinois 60601
Of Counsel

* Counsel of Record
(312) 861-2042

QUESTION PRESENTED FOR REVIEW

Whether the Illinois Supreme Court properly reversed a judgment sentencing respondent to death and remanded the case for a new trial on the ground that respondent had been denied effective assistance of counsel where numerous examples of his attorney's incompetence were cited and where his attorney was involved in disciplinary proceedings at the time of the criminal trial and subsequently was disbarred.

TABLE OF CONTENTS

	<u>PAGE</u>
Question Presented for Review	2
Table of Authorities	4
Opinions Below	5
Jurisdiction	6
Constitutional Provision Involved	6
Statement of the Case	6
Argument: Reasons for Disallowing the Writ	11
A. THE ILLINOIS SUPREME COURT HAD ABUNDANT GROUNDS TO REVERSE AND REMAND THIS CASE FOR A NEW TRIAL BECAUSE RESPONDENT HAD BEEN DENIED EFFECTIVE ASSISTANCE OF COUNSEL	11
B. THIS CASE IS DISTINGUISHABLE FROM UNITED STATES V. CRONIC	14
C. THE STANDARDS FOR EFFECTIVE ASSISTANCE OF COUNSEL ARE CLEAR AND THE ILLINOIS SUPREME COURT'S DECISION IS NOT IN CONFLICT WITH THESE STANDARDS	15
D. THIS CASE DOES NOT PRESENT A FEDERAL QUESTION	18
E. THE EXISTENCE OF POST-CONVICTION REMEDIES PROVIDES NO JUSTIFICATION FOR THE GRANT OF CERTIORARI	19
Conclusion	20

TABLE OF AUTHORITIES

Page

Cases

<u>Cuyler v. Sullivan</u> , 446 U.S. 335 (1980)	15, 16, 17
<u>In Re Weston</u> , 92 Ill.2d 431, 442 N.E.2d 236 (1982)	9, 10
<u>People v. Berger</u> , 109 Ill.App.3d 1054, 441 N.E.2d 915 (2d Dist. 1982)	17
<u>People v. Scott</u> , 94 Ill.App.3d 159, 418 N.E.2d 805 (5th Dist. 1981)	17
<u>People v. Thomas</u> , 38 Ill.2d 321, 231 N.E.2d 436 (1967)	19
<u>United States v. Cronic</u> , 675 F.2d 1126 (10th Cir. 1982), cert. granted, _____ U.S. _____, 51 U.S.L.W. 3611 (No. 82-660 Feb. 22, 1983)	14, 15

Statutes

Ill. Rev. Stat., ch. 110A, §615	18
Ill. Rev. Stat., ch. 38, §122-1	19
28 U.S.C. §2254(d)	19

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

NO. _____

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

DENNIS WILLIAMS,

Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI
TO THE ILLINOIS SUPREME COURT

Respondent Dennis Williams respectfully prays that this Court deny petitioner's writ of certiorari to review the judgment and opinion of the Illinois Supreme Court in this matter.

OPINIONS BELOW

After a trial in the Circuit Court of Cook County, Illinois, respondent was convicted of murder, aggravated kidnapping and rape in October 1978. On February 6, 1979, he was sentenced to death by electrocution. On April 16, 1982, the Illinois Supreme Court affirmed the conviction and imposition of the death penalty. The court's opinion was withdrawn after respondent successfully petitioned for a rehearing.

On November 18, 1982, the Illinois Supreme Court reversed respondent's conviction and remanded the matter for a new trial. The court's opinion is reported at 93 Ill.2d 309, 444 N.E.2d 136, and appears as Appendix A to the petition for certiorari.

On January 28, 1983, the Illinois Supreme Court denied petitioner's request for a new hearing.

JURISDICTION

Petitioner served a copy of its petition on respondent 60 days after the order of the Illinois Supreme Court denying petitioner's request for a new hearing.

CONSTITUTIONAL PROVISION AT ISSUE

Petitioner contends that the Sixth Amendment's guarantee of assistance of counsel is at issue. In fact, the opinion below does not state that the Illinois Supreme Court was relying upon the United States Constitution. Nor does the Illinois Supreme Court opinion expressly rely upon the Constitution of the State of Illinois, Article I, Section 8, providing for the right of the accused in criminal prosecutions to be defended by counsel. We believe that the decision below involved no federal or state constitutional provision directly, but reflected the exercise by the Illinois Supreme Court of its general supervisory powers over Illinois state courts and over Illinois attorneys.

STATEMENT OF THE CASE

This case concerns the criminal trial of respondent for murder, kidnapping and rape. Respondent was found guilty and subsequently was sentenced to death. Archie Weston, the attorney who represented respondent at trial, also represented one of the State's original witnesses against respondent. During his defense of respondent, Mr. Weston was involved in other matters which eventually led to his disbarment by the Illinois Supreme Court.

Proceedings in the Trial Court

On May 12, 1978, Carol Schmal and Larry Lionberg were found dead in East Chicago Heights, Illinois. Both had been shot and Schmal had been raped.

Shortly thereafter, Dennis Williams, Willie Rainge and Kenneth Adams were arrested and charged with murder, kidnapping and rape. An attorney named Archie Weston represented Williams and Rainge in connection with these charges. Adams was represented by another attorney. Adams' girlfriend Paula Gray initially testified before a grand jury against these defendants but later recanted her testimony at the preliminary hearing. Gray was then indicted for the same offenses as well as for perjury. Weston also was retained to represent Gray. The defendants were tried in September and October 1978 in the same courtroom but before two separate juries; one jury heard evidence relevant to Gray, while the other heard evidence relevant to the remaining defendants.

The petition for certiorari recounts the evidence presented against respondent at trial in some detail. We believe that such a summary is neither necessary nor appropriate to this petition, and we do not respond except to state that the evidence upon which petitioner relied at trial was wholly circumstantial. That evidence was so tenuous and fraught with legal problems that effective counsel should have been able to exclude or discredit most of it. For example:

1. The three Caucasian hairs which the Illinois Supreme Court characterized as "perhaps crucial" to petitioner's case were obtained after a second warrantless search of respondent's automobile. Respondent's counsel never moved to quash that evidence on the ground that it had been obtained illegally.

2. Petitioner's key witness Charles McCraney, who supposedly saw Williams enter the premises in question at the time of the crime, related a bizarre story at trial which competent counsel probably could have discredited by effective cross-examination or by a prior statement made

by the witness within a few days after the murder. McCraney testified several times under oath that he had given such a statement, but petitioner never produced it in discovery. Respondent's counsel failed to demand a full evidentiary hearing for the purpose of discovering the existence of the written statement.

3. Petitioner provided prejudicial material to respondent's jury which was intended to make the jurors aware that Gray had accused her co-defendants. Respondent's attorney did not object and took no steps to prevent this material from being given to the jury.

Respondent was found guilty of murder, kidnapping and rape at the conclusion of the trial, and later was sentenced to death.

Appeal to the Illinois Supreme Court

On appeal directly to the Illinois Supreme Court, respondent argued, among other things, that he had been denied effective assistance of counsel for the reasons listed above as well as on numerous other grounds. The Illinois Supreme Court initially denied the appeal with a vigorous dissent by Justice Seymour Simon, who believed that respondent had been denied his right to counsel. Subsequently, the court granted respondent's petition for rehearing and specifically requested comments from counsel concerning the relevance of a disciplinary proceeding against respondent's attorney.

In Re Weston

Archie Weston represented respondent during the period from May 15, 1978, when he first appeared as respondent's attorney, through February 6, 1979, when respondent was sentenced to death. Respondent's trial took place between September 14 and October 20, 1978, and the death penalty hearing was held between January 8 and January 31, 1979. Through-

out this same period, Weston was involved in proceedings before the Attorney Registration and Disciplinary Commission of the Illinois Supreme Court arising from charges that he neglected an estate matter in which he had been retained as administrator. These proceedings eventually resulted in Weston's disbarment.

Investigation into Archie Weston's conduct as administrator of the estate began before he became respondent's attorney. In April 1978, a complaint against Weston was filed with the Disciplinary Commission on behalf of the heirs. The Commission wrote to Weston on April 13 and again on May 3, 1978, requesting him to respond to the charges. On August 21, 1978, the Commission notified the probate judge of the charges made concerning Weston's handling of the estate, and on August 25, 1978, the probate court ordered Weston to appear on September 21, 1978 to show cause why he should not be held in contempt for his neglect of the estate. Mr. Weston obtained a continuance to November 3, 1978, but when he failed to appear on that date, he was removed as administrator of the estate. See In Re Weston, 92 Ill.2d 431, 442 N.E.2d 236 (1982).

During oral argument in In Re Weston, counsel for Weston advised the Illinois Supreme Court that in late 1978 "things fell apart in a certain sense" for Weston, and acknowledged that Weston "had perhaps been over-extending himself". Weston claimed that he "was under such emotional stress that he did not feel mentally or physically capable of presenting his case before the Hearing Board or the Review Board" of the Disciplinary Commission. In Re Weston, 92 Ill.2d at 436.

In recommending that Weston be disbarred, the Commission's Hearing Board made the following findings:

The record establishes, and this Hearing Panel finds, that [Weston] neglected legal matters entrusted to him, committed acts which are prejudicial to the administration of justice and intentionally caused damage and prejudice to the Estate of Ella C. Graham and commingled and converted funds belonging

to a client, all in violation of the Disciplinary Rules cited in the complaint. See In Re Weston, 92 Ill.2d at 436.

The Hearing Board found that from June 1975 to November 1978, Weston had failed to collect rents and to pay taxes on real estate owned by the decedent, resulting in the loss of the property by the estate, and that during the same period of time he failed to file any estate inventory or accounts in the probate court. The Board also found that between November 1978 and June 1979, Weston failed to comply with certain orders of the probate court. The Board further determined that Weston had obtained possession of estate funds and converted these funds to his own use. These findings were affirmed and the Illinois Supreme Court disbarred Archie Weston.

Moreover, Weston was suspended from the practice of law by the Illinois Supreme Court in 1980 because of his refusal to respond to subpoenas regarding three other complaints filed against him. In Re Weston, 92 Ill.2d at 439. Although the nature of these complaints is not disclosed by the present record, the Illinois Supreme Court was advised by Weston's counsel during oral argument that the complaints related to the years 1978 through 1980, the period during which Weston also represented respondent Dennis Williams.

Rehearing

In view of the new evidence relating to these charges against Weston in other matters but pending at the same time as the criminal trial of respondent, and in light of the numerous examples of incompetence cited by respondent on appeal, the Illinois Supreme Court concluded in its November 18, 1982 opinion that the interests of justice required the prior judgment to be reversed and the case to be remanded for a new trial.

ARGUMENT: REASONS FOR DISALLOWING THE WRIT

There is no special or important reason for this Court to grant certiorari and to review the decision of the Illinois Supreme Court. None of the guidelines of Rule 17 of the Rules of this Court are met. The decision below does not conflict with the applicable decisions of another state court of last resort, or of a federal court of appeals, or of this Court.

- A. The Illinois Supreme Court Had Abundant Grounds to Reverse and Remand This Case for a New Trial Because Respondent Had Been Denied Effective Assistance of Counsel.

Petitioner describes the decision of the Illinois Supreme Court in this case as "irrational" because, according to petitioner, it holds that "the mere filing of complaints concerning the conduct of a defense attorney in an unrelated matter [is] enough to prove incompetence in a criminal case." (Petition at 8) Petitioner's characterization is incorrect. The Illinois Supreme Court made no such statement, nor can its decision be read broadly to stand for such a proposition.

In fact, the Illinois Supreme Court repeatedly emphasized that the unique circumstances of this case weighed heavily in its decision. Consequently, the holding of the court below must be construed narrowly. Chief among those unique circumstances was the fact that respondent was on trial in a very serious criminal case which could, and did, lead to the imposition of the death penalty. Secondly, respondent's attorney, throughout his defense of respondent, faced a disciplinary inquiry regarding charges of gross neglect, misconduct and incompetence, which charges were well founded according to the Illinois Supreme Court. It was on the basis of these charges that respondent's counsel subsequently was found to be incompetent and was disbarred.

The decision below, therefore, certainly does not hold that a defendant's Sixth Amendment right to counsel is violated whenever it can be shown that a complaint of misconduct is pending against his attorney. Rather, the decision reflects the exercise by the Illinois Supreme Court of its general supervisory powers over Illinois state courts as well as over Illinois attorneys and its powers of review in a unique case. The court had carefully reviewed the record in respondent's criminal trial, had considered respondent's arguments that he had been denied effective assistance of counsel, and was familiar with the facts surrounding the investigation of Archie Weston's professional conduct. In light of all these particular circumstances, the court concluded that the interests of justice required respondent to be granted a new trial.

Petitioner also asserts that there was "no evidence" that the matters connected with the disciplinary and disbarment proceedings affected Weston's representation of respondent. (Petition at 8) This likewise is untrue.

Weston was found to have neglected legal matters entrusted to him, to have committed acts prejudicial to the administration of justice and acts which intentionally caused damage and prejudice to his client in the estate matter. The Illinois Supreme Court obviously believed that Weston's conduct was serious enough to warrant disbarment. The court also believed, given the totality of the evidence, that this same misconduct could have recurred in Weston's handling of respondent's defense:

Nevertheless, because of the newly acquired information concerning Williams' counsel, which we have concluded may well have had an effect on counsel's ability to represent his client in the trial of this capital case, we can no longer say, with any degree of assurance, that Williams received the effective assistance of counsel guaranteed by the Constitution. (Petitioner's Appendix at 12a)

The finding of the Illinois Supreme Court that during this same period of time Weston had been negligent in another legal matter, and the existence of several other complaints against him, led the court to believe that Weston was unable to afford his clients competent representation.

The Illinois Supreme Court also was confronted with numerous examples of Weston's incompetence during respondent's criminal trial. On appeal, respondent had pointed to many instances of inaction by his attorney to demonstrate that he was denied the effective assistance of counsel. (See the listing of some of these examples by the Illinois Supreme Court in Petitioner's Appendix at 12a-13a.) The court concluded that these examples reflected not simple errors in judgment, but gross incompetence similar to that which Weston exhibited in handling the estate matter:

However, we are now aware, for the first time, of the unique circumstances under which counsel in this case was operating at the time of the capital trial. In light of these facts, we can no longer characterize counsel's decision not to make the motion to suppress the hair evidence or to take other action in his client's behalf as professional misjudgments made with full knowledge of the applicable law and the facts. Moreover, while we do not believe that the burden of defending three clients for capital murder before two juries, standing alone, necessarily reduced counsel's effectiveness, that fact in view of the new information now before us cannot be disregarded. (Petitioner's Appendix at 13a)

The Illinois Supreme Court thus had ample reason to believe that respondent may have been deprived of his right to counsel in the present case.

During the months immediately preceding the commencement of respondent's trial, when Weston should have been investigating and preparing the defense, he was himself under investigation by the Disciplinary Commission and was under court order to account for his handling of the estate matter on charges of neglect which subsequently were found to be true. The same neglect pervaded Weston's defense of respondent. For

example, when Weston was ordered to trial on September 14, 1978, he repeatedly protested that he was not ready for trial, stating at one point: "...there's been no preparation by defense counsel. None. None whatsoever".

The right of an accused to effective assistance of counsel is fundamental. In the present case, respondent was defended by an attorney whose negligence and misconduct in another case was established and resulted in disbarment. The matters disclosed by the record and proceedings in In re Weston cast serious doubt upon the fairness of respondent's trial and the integrity of the resulting verdicts. While such doubts would be intolerable in any case, they are particularly so in this, a capital case rife with examples of incompetence and neglect. The Illinois Supreme Court therefore had ample grounds to reverse respondent's conviction and remand the case for a new trial.

B. This Case Is Distinguishable from United States v. Cronic.

Petitioner cites as "[t]he first reason why certiorari should be granted" the fact that this Court recently took jurisdiction in United States v. Cronic, 51 U.S.L.W. 3611 (No. 82-660 Feb. 22, 1983). (Petition at 6) The grant of certiorari in that case, however, provides no justification for reaching the same result in this matter since the facts and the reasoning of the courts are entirely different in the two cases.

The tersely worded decision of the Court of Appeals for the Tenth Circuit in United States v. Cronic, 675 F.2d 1126 (10th Cir. 1982), held that the defendant was not adequately represented in a criminal prosecution for mail fraud and unlawful use of a fictitious name. The court apparently ignored any evidence as to how counsel actually performed in conducting the defense; the court did not rely on or even mention a single

error committed by Cronic's attorney in representing his client. Indeed, the Court of Appeals expressly endorsed the principle that "when circumstances hamper a given lawyer's preparation of a defendant's case, the defendant need not show specified errors in the conduct of his defense in order to show ineffective assistance of counsel." 675 F.2d at 1128. In support of its decision, the court noted only that the length of time for trial preparation and the potential criminal sentence were similar to those at issue in prior cases decided by that court finding a violation of the Sixth Amendment right to assistance of counsel. No explanation was given, however, as to how Cronic's counsel was "hampered" in the conduct of his defense.

In contrast, counsel for respondent in this case has been found to be incompetent and has been disbarred by the Illinois Supreme Court. Respondent's counsel was under investigation at the time that he was supposed to be fighting for defendant's life. The Illinois Supreme Court certainly did not ignore -- nor did it believe it could ignore -- the actual performance of respondent's counsel at trial. Instead, the court expressly referred to counsel's "decision not to make the motion to suppress the hair evidence" and to numerous other omissions as evidence of his inability properly to defend his client. (Petitioner's Appendix at 12a-14a) Thus, unlike the court in Cronic, the Illinois Supreme Court had abundant grounds for finding that respondent had not received effective assistance of counsel.

C. The Standards for Effective Assistance of Counsel Are Clear and the Illinois Supreme Court's Decision Is Not in Conflict with These Standards.

As petitioner correctly points out, this Court has held that a violation of the right to effective assistance of counsel will not be assumed, but must be demonstrated. Cuyler

v. Sullivan, 446 U.S. 335 (1980). (Petition at 9) This standard clearly has been met in the present case. That respondent was denied effective assistance of counsel was demonstrated not by Weston's failure to make one particular motion, but by numerous examples of incompetence and inaction, including:

-- Following its review of a detailed record, the Illinois Supreme Court found respondent's attorney guilty of gross misconduct and prohibited him from practicing law because of his handling of an estate matter as well as for his failure to respond to complaints against him in three other matters. The charges of misconduct against respondent's attorney were pending against counsel during the defense of respondent in the capital case.

-- The Illinois Supreme Court noted that respondent had cited numerous instances of inaction by his counsel and concluded that these instances could not be characterized merely as professional misjudgments, such as:

the failure to make a motion to suppress the physical evidence seized from Williams' car -- evidence which was perhaps crucial to the State's case; the failure to object to the testimony concerning the Canadian study on hair comparisons; the failure to object to prejudicial material received by Williams' jury which it is alleged was designed to insure that the jurors would know that Paula Gray had accused her codefendants; the failure to object to the rebuttal testimony of the 11-year-old boy; the failure to object to the information imparted to the jury concerning the manner in which its verdict would be reviewed; the failure to object to testimony concerning the good character of the decedents; the failure to demand a full evidentiary hearing for the purpose of discovering the existence of a written statement allegedly made by Charles McCraney within a few days of the murder; and the failure to make a motion for a new trial. (Petitioner's Appendix at 12a-13a)

-- The Illinois Supreme Court held that the burden of defending three clients for capital murder simultaneously before two juries may have reduced counsel's effectiveness.

The court below, therefore, correctly concluded that respondent's right to effective assistance of counsel had been violated because of the incompetence of his attorney.

Petitioner tells this Court that "[t]he Illinois Supreme Court follows a different standard depending on whether counsel is retained or appointed." (Petition at 11) While Illinois courts may have made some distinction in the past, at least as a matter of semantics, between the standards for judging retained and appointed counsel, any such distinction has been abolished. In People v. Scott, 94 Ill.App.3d 159, 418 N.E.2d 805 (5th Dist. 1981), for example, an Illinois appellate court held that a double standard for judging the effectiveness of counsel was impermissible in light of this Court's decision in Cuyler v. Sullivan, 446 U.S. 335 (1980). The same result was reached by another Illinois appellate court in People v. Berger, 109 Ill.App.3d 1054, 441 N.E.2d 915 (2d Dist. 1982).

The Illinois Supreme Court has not addressed that precise issue since the decision in Cuyler, nor is that issue relevant to the present case. Indeed, the court expressly eschewed applying any particular standard or test in this matter because of the unusual underlying facts, and relied instead on its role as the highest court in the State of Illinois to administer justice in an extraordinary case. With full knowledge of the records in respondent's criminal prosecution as well as in In Re Weston, the Illinois Supreme Court reached its decision that the interests of justice required respondent to be granted a new trial on the basis of "the unique circumstances and sequence of events in this capital case" which it believed "will rarely, if ever, be duplicated." (Petitioner's Appendix at 14a) The unique circumstances of this case, therefore, render it unsuitable for review for the purpose of determining whether any applicable standard has been misapplied.

Finally, petitioner urges this Court to assert jurisdiction in the present case in order to establish "a single definite standard for judging the adequacy of representation by counsel in a criminal case." (Petition at 10) We submit that even assuming that a single standard can or should be defined for use in all cases, this case is a particularly inapt vehicle for formulating such a universally applicable standard.

D. This Case Does Not Present a Federal Question.

Petitioner assumes that the Illinois Supreme Court based its decision on its interpretation of the Sixth Amendment to the United States Constitution, although petitioner acknowledges that the court did not specify whether it was referring to the United States Constitution or to the Constitution of the State of Illinois, Article I, Section 8, which provides that "the accused shall have the right to defend by counsel." (Petition at 12-13)

In reaching its decision in this case, the Illinois Supreme Court did not rely expressly either on the federal or on the state constitution. The decision below results from the fact that the Illinois Supreme Court was the forum most familiar with the background facts relating not only to respondent's criminal prosecution, but also to the professional misconduct and disbarment proceedings of respondent's attorney. The decision likewise reflects the Illinois Supreme Court's responsibility to supervise the practice of law by Illinois attorneys and its role as the court of last resort in Illinois with the authority under Rule 615 of the Illinois Supreme Court Rules, Ill. Rev. Stat. ch. 110A, §615, to review criminal cases and to ensure that the interests of justice are served. Faced with a unique fact situation in an unusual case, the Illinois Supreme Court found that the interests of justice required a new trial for respondent. It was a conclusion based purely on a peculiar

fact situation and internal state administrative considerations, with no possible federal ramifications.

Under these circumstances, this Court should decline to review the Illinois Supreme Court's decision, and assume that the decision rests on the narrowest possible ground -- the Illinois Supreme Court's exercise of its inherent supervisory powers over the Illinois state courts and Illinois attorneys.

E. The Existence of Post-Conviction Remedies Provides No Justification for the Grant of Certiorari.

Petitioner argues that even if respondent's conviction is affirmed, he "will still have the right to hearings in both state and federal court in which he may attempt to show actual incompetence on the part of his trial counsel." (Petition at 13) This argument is irrelevant and inappropriate in a petition for certiorari.

Moreover, respondent's alternatives are not as broad as petitioner suggests. As the very case cited in the petition makes clear, under the Illinois Post-Conviction Hearing Act, Ill. Rev. Stat. 1981, ch. 38, §122-1, respondent can raise only those issues which were not raised or could not have been raised on appeal, and which were not part of the record in the case. People v. Thomas, 38 Ill.2d 321, 231 N.E.2d 436 (1967). The availability of a federal habeas corpus proceeding likewise is narrowly restricted to cases in which particular showings can be made. 28 U.S.C. §2254(d).

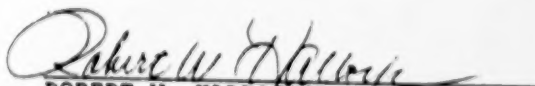
Petitioner in effect asks this Court to set aside the decision of the Illinois Supreme Court, which was familiar with this case as well as with the Archie Weston disbarment matter, and to start the proceeding over again in another forum and with a more limited scope. The Illinois Supreme Court already has fully considered all the circumstances relevant to respondent's claim, found the claim meritorious, and vacated respon-

dent's conviction in the interests of fundamental fairness and justice. The question of the competence of respondent's counsel properly was before the Illinois Supreme Court, and the court reached a valid conclusion. To argue that that decision now should be reconsidered because the same claim could be presented to yet another court or courts is nonsensical. Petitioner's suggestion undermines the policy of judicial economy and serves no purpose other than to require respondent to remain in prison for a longer time while he seeks vindication of the violation of his rights.

CONCLUSION

For the foregoing reasons, respondent respectfully prays that petitioner's request for issuance of a writ of certiorari be denied.

Respectfully submitted,

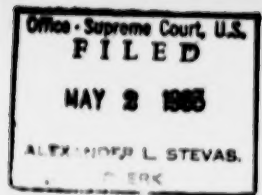


ROBERT W. HALLOCK*
Kirkland & Ellis
200 East Randolph Drive
Suite 6000
Chicago, Illinois 60601
Attorney for Respondent

SYDNEY BOSWORTH MCDOLE
HELEN E. WITT
Kirkland & Ellis
200 East Randolph Drive
Suite 6000
Chicago, Illinois 60601
Of Counsel

*Counsel of Record
(312) 861-2042

Dated: April 28, 1983



82-1691

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

DENNIS WILLIAMS,

Respondent.

RESPONDENT'S MOTION FOR LEAVE
TO PROCEED IN FORMA PAUPERIS

Respondent Dennis Williams moves this Court for leave to proceed in forma pauperis as provided in Supreme Court Rule 46. The affidavit of Robert W. Hallock in support of this motion is attached.

Respectfully submitted,

ROBERT W. HALLOCK
Kirkland & Ellis
200 East Randolph Drive
Suite 6000
Chicago, Illinois 60601
Attorney for Respondent

SYDNEY BOSWORTH McDOLLE
HELEN E. WITT
Kirkland & Ellis
200 East Randolph Drive
Suite 6000
Chicago, Illinois 60601
Of Counsel

Dated: April 28, 1983

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

DENNIS WILLIAMS,

Respondent.

AFFIDAVIT OF ROBERT W. HALLOCK
IN SUPPORT OF RESPONDENT'S MOTION
TO PROCEED IN FORMA PAUPERIS

Robert W. Hallock, being first duly sworn, deposes
and says:

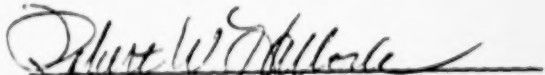
1. I am a partner in the law firm of Kirkland & Ellis and I am counsel for respondent Dennis Williams in the above-entitled case.

2. On July 15, 1982, I was appointed by Judge William T. Hart of the United States District Court for the Northern District of Illinois, Eastern Division, to represent respondent in a civil rights action which respondent had initiated pro se in that court entitled Dennis Williams vs. Marvin Reed, et al., No. 80C 3009. I presently am counsel of record for respondent in that case.

3. Subsequent to that appointment, the Illinois Supreme Court ordered a new criminal trial for respondent. Respondent requested that I represent him in his new trial. Consequently, I represent respondent pro bono in all matters arising from his criminal trial, including his response to the petition for certiorari which is now before this Court.

4. Respondent Dennis Williams is now and has been since 1978 incarcerated in state penitentiaries. He has not been employed during the past five years. He has no source of income.

5. Respondent is impoverished and is unable to pay the costs of this proceeding, including printing costs.



ROBERT W. HALLOCK
Kirkland & Ellis
200 East Randolph Drive
Suite 6000
Chicago, Illinois 60601
Attorney for Respondent

SUBSCRIBED AND SWORN TO before me
this 27th day of April, 1983.


NOTARY PUBLIC

MAY 18 PAGE 9

Office - Supreme Court, U.S.
FILED
MAY 18 1983
ALEXANDER L. STEVENS,
CLERK

82-1691

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

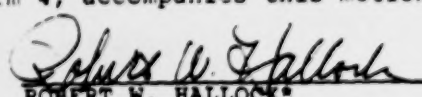
vs.

DENNIS WILLIAMS,

Respondent.

RESPONDENT'S MOTION FOR LEAVE
TO PROCEED IN FORMA PAUPERIS

Respondent Dennis Williams hereby moves this Court for leave to proceed in forma pauperis as provided in Supreme Court Rule 46. Respondent's affidavit, in the form prescribed in Fed. Rules App. Proc., Form 4, accompanies this motion.


ROBERT W. HALLOCK*
Kirkland & Ellis
200 East Randolph Drive
Suite 6000
Chicago, Illinois 60601
Attorney for Respondent

SYDNEY BOSWORTH McDOLLE
HELEN E. WITT
Kirkland & Ellis
200 East Randolph Drive
Suite 6000
Chicago, Illinois 60601
Of Counsel

* Counsel of Record
(312) 861-2042

Dated: May 17, 1983

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

DENNIS WILLIAMS,

Respondent.

AFFIDAVIT IN SUPPORT OF RESPONDENT'S
MOTION TO PROCEED IN FORMA PAUPERIS

I, Dennis Williams, being first duly sworn, depose and say that I am the Respondent in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; and that I believe I am entitled to prevail.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the costs of this proceeding are true.

1. Are you presently employed?

No.

If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. April 16, 1978 - attended

CETA Government Educational Program from approximately
Sept. 8th, 1977 to April 16, 1978, earning approximately
\$1400 in total; salary per week two weeks varied.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?
No.
3. Do you own any cash or checking or savings account?
No.
4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?
No.
5. List the persons who are dependent upon you for support and state your relationship to those persons.
None.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

SUBSCRIBED AND SWORN TO
before me this 12
day of May, 1983.

Dennis Williams
DENNIS WILLIAMS #C-63823
Box 99, N.C. #115 - Pontiac State Prison
Pontiac, Illinois 61764

Let the applicant proceed
without prepayment of costs
or fees or the necessity
of giving security therefor.

David J. [Signature]